

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
South Slope Cooperative Telephone)	
Company d/b/a South Slope Wireless)	
)	WT Docket No. 01-309
Section 68.4(a) of the Commission's Rules)	
Governing Hearing Aid Compatible)	
Telephones)	
)	
Request for Temporary Waiver or Temporary)	
Stay of Section 20.19(c)(2)(i) of the Rules)	

To: Chief, Wireless Telecommunications Bureau

PETITION FOR TEMPORARY WAIVER OR TEMPORARY STAY

South Slope Cooperative Telephone Company d/b/a South Slope Wireless ("South Slope" or "the Company"), by its attorneys and pursuant to Sections 1.3 and 1.925 of the Commission's Rules, hereby requests a one-year temporary waiver, or temporary stay, up to and including September 16, 2006, of the requirements contained in Section 20.19(c)(2)(i) of the Rules that South Slope include in its handset offerings at least two handset models per air interface that comply with Rule Section 20.19(b)(1), and make available in each retail store owned or operated by it all of these handset models for consumers to test in the store. In support hereof, the following is shown:

Background

1. South Slope is a member-owned rural telephone cooperative with headquarters in North Liberty, Iowa. South Slope is the licensee of Broadband PCS Stations WPOL801 (A-Block, Partitioned Submarket 82, – Des Moines-Quad Cities MTA), WPOL802 (A-Block, Partitioned Submarket 86, – Des Moines-Quad Cities MTA) and WPWM732 (A-Block, Partitioned Submarket 262, – Des Moines-Quad Cities MTA). The Company has

fewer than 500,000 subscribers. As such, it is a Tier III Commercial Mobile Radio Service (“CMRS”) provider, as defined in the Commission’s Non-Nationwide Carriers Order .¹

2. South Slope’s wireless system employs a GSM air interface and is configured to operate as part of the *i wireless* network. *i wireless* is headquartered in Urbandale, Iowa, and is a partnership between T-Mobile USA and Iowa Network Services (“INS”). South Slope currently markets a variety of Motorola and Nokia digital wireless handsets. To the best of South Slope’s knowledge, after diligent research by its counsel and by staff and representatives of *i wireless*, there are no GSM handsets commercially available to South Slope or to *i wireless* that meet a U3 rating for radio frequency interference under ANSI Standard C63.19.

3. It is South Slope’s understanding that representatives for Motorola advised the Commission’s Staff in August 2005 “that GSM 1900 products identified to support T-Mobile’s HAC product portfolio had unexpectedly not achieved an M3 or better rating when tested and reviewed for HAC certification.”² Motorola’s *Ex Parte* Notice also indicated that “it is presently seeking HAC certification for other product to support T-Mobile and that some additional time will be needed by T-Mobile to receive the product and implement its carrier obligations.”³ These statements to the Commission’s Staff by Motorola lend further support for South Slope’s finding that GSM handsets that meet HAC certification standards are not generally available.

¹ Revision of the Commission’s Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems, Phase II Compliance Deadlines for Non-Nationwide CMRS Carriers, *Order to Stay*, CC Docket No. 94-102, FCC 02-210, 17 FCC Rcd 14841 (July 26, 2002) (“*Order to Stay*”) at ¶22.

² See August 31, 2005 *Ex Parte* Notice filed by Motorola, WT Docket No. 01-309 (provided below as Attachment A.

Rule Section 20.19(c)(2)(i) Requirements

4. Section 20.19(c)(2)(i) of the Commission’s Rules specifies that “each provider of public mobile radio service must ... [i]nclude in its handset offerings at least two handset models per air interface that comply with Section 20.19(b)(1) by September 16, 2005, and make available in each retail store owned or operated by the provider all of these handset models for consumers to test in the store ...” Rule Section 20.19(b)(1) specifies that a “wireless phone used for public mobile radio services is hearing aid compatible ... if it meets, at a minimum” a U3 rating for radio frequency interference under ANSI Standard C63.19. Thus, the rule requirement is generally applicable to all Tier III CMRS carriers. It requires South Slope to offer, and to make available for in-store testing by consumers, for its GSM air interface, at least two Hearing Aid Compatible (“HAC”) digital wireless telephones meeting a U3 rating under ANSI Standard C63.19 for radio frequency interference by the September 16, 2005 implementation deadline. However, because South Slope offers more than two digital wireless telephones for its GSM air interface, it does not qualify for the *de minimis* exception codified in Section 20.19(e)(1) of the Commission’s Rules.

Waiver Standard

5. The Commission has indicated generally that waiver requests of the Hearing Aid Compatible (“HAC”) digital wireless handset requirements will be evaluated under the general waiver standard set forth in Sections 1.3 and 1.925 of the Rules and the standards set forth in WAIT Radio v. FCC, 418 F.2d 1153 (D.C. Cir. 1969), *appeal after remand*, 459 F.2d 1203 (D.C. Cir. 1972), *cert. denied*, 409 U.S. 1027 (1972) and Northeast

Cellular Telephone Company v. FCC, 897 F.2d 1164(D.C. Cir. 1990).⁴

6. Section 1.3 of the Rules states, in relevant part, that “[a]ny provision of the rules may be waived by the Commission on its own motion or on petition if good cause therefor is shown.” Section 1.925(b)(3) of the Rules states that the “Commission may grant a waiver request if it is shown that: (i) [t]he underlying purpose of the rule(s) would not be served or would be frustrated by application to the instant case, and that a grant of the requested waiver would be in the public interest; or (ii) [i]n view of unique or unusual factual circumstances of the instant case, application of the rule(s) would be inequitable, unduly burdensome or contrary to the public interest, or the applicant has no reasonable alternative.” Under WAIT Radio and Northeast Cellular Telephone Company, a rule waiver “may be granted in instances where the particular facts make strict compliance inconsistent with the public interest if applied to the petitioner and when the relief requested would not undermine the policy objective of the rule in question.”⁵

**A Waiver Is Warranted Because Compliant
Handsets Are Not Available To Small GSM Carriers**

7. The reason in support of this waiver request is starkly simple and can be concisely stated: There are no HAC compliant digital wireless telephones available for purchase by small GSM carriers, such as South Slope, that meet a U3 rating under ANSI Standard C63.19 for radio frequency interference. As a result, compliance with the requirements of Section 20.19(c)(2)(i) of the Rules is an impossibility, and, therefore, a temporary waiver of the Rule’s requirements is clearly warranted.

⁴ Section 68.4(a) of the Commission’s Rules Governing Hearing Aid-Compatible Telephones, WT Docket No. 01-309, *Order on Reconsideration and Further Notice of Proposed Rulemaking*, FCC 05-122, *rel.* June 21, 2005 (“*Order on Reconsideration*”) at ¶50.

⁵ *Order on Reconsideration*, Para. 50 n. 158.

8. In adopting the Rule Section 20.19(c)(2)(i) September 16, 2005 implementation deadline for Tier II and Tier III CMRS carriers, the Commission projected (but, obviously, could not assure) that digital wireless handsets meeting a U3 rating under ANSI Standard C63.19 for radio frequency interference would be made available by the manufacturers for purchase by small GSM carriers by that date.⁶ While some industry progress has been made toward developing compliant handsets, it does not appear that research and development activities have reached the point where the handset manufacturers can make the handsets commercially available to any GSM carrier (large or small). Thus, for example, the most recent report in this Docket by The Alliance for Telecommunications Industry Solutions (“ATIS”), filed on May 17, 2005, states “that a number of recent, substantive developments have made it difficult for handset vendors to evaluate their products for hearing aid compatibility pursuant to the C63.19 Standard;” that each “of the wireless air interface technologies (CDMA, GSM, iDEN, TDMA) has challenges to overcome in order to achieve hearing aid compatibility in accordance with the C63.19 Technical Measurement Standard;” and that the “ability to combine air interfaces as well as multiple frequency bands within a single wireless device creates tougher challenges and increases the level of complexity for achieving [Hearing Aid Compatible Wireless Devices].”⁷ Statements submitted by individual handset manufacturers as part of the ATIS report indicate that some have a few handset models that are *believed* to be compliant, but it appears that no compliant handsets have been made available commercially for purchase by any carrier, large or small.

⁶ Section 68.4(a) of the Commission’s Rules Governing Hearing Aid-Compatible Telephones, WT Docket No. 01-309, *Report and Order*, 18 FCC Rcd 16753 (2003); *Erratum*, WT Docket No. 01-309, 18 FCC Rcd 18047 (2003) (Hearing Aid Compatibility Order).

⁷ See ATIS “Hearing Aid Compatibility Report #3,” filed May 17, 2005, at pages 3 and 7.

9. Assuming for purposes of argument that some compliant digital wireless handset models are commercially available, it is nevertheless clear (as a result of inquiries to its handset vendors) that none are available for purchase by South Slope. Thus, once compliant handsets are being marketed commercially, it is clear that the handset manufacturers will be concentrating on meeting the needs of the larger (*i.e.*, Tier I) carriers, to the exclusion of smaller carriers.

10. Given these facts and circumstances, it seems abundantly clear that the temporary relief requested herein is warranted and in the public interest, and that good cause exists to grant the temporary waiver requested. Where the Commission's projections of technological feasibility and commercial availability do not pan out, waiver of the requirements would appear to be particularly appropriate. Indeed, basic principles of administrative law prohibit the Commission from compelling carriers to do the impossible.⁸ Furthermore, the Commission has acknowledged that Tier II and Tier III CMRS carriers "have much less ability than the nationwide CMRS carriers to obtain specific vendor commitments necessary" to deploy the equipment needed to meet regulatory requirements; that "handset vendors ... give priority to the larger, nationwide carriers;" that the deployment needs of the larger carriers create "downstream delays for Tier II and III carriers;" and, accordingly, "that there are temporary and special circumstances applicable to [Tier II and Tier III carriers] that constitute a sufficient basis to grant a stay on a limited and temporary basis" from Commission-imposed regulatory requirements. *Order to Stay*, 17 FCC Rcd. 14841, Para Nos. 10 and 11 (2002). *See also*, *FCI 900, Inc.*, 16 FCC Rcd. 11072 (Comm. Wir, Div., WTB 2001) (granting all 900 MHz

⁸ *See, e.g., Alliance for Cannabis Therapeutics v. DEA*, 930 F.2d 936, 940 (D.C. Cir. 1991); *Hughey v. JMS Development Corp.*, 78 F.3d 1523, 1530 (11th Cir. 1996).

MTA licensees an extension of the construction deadline so that they might deploy advanced digital 900 MHz systems, where the subject digital voice equipment was not commercially available in sufficient quantities in time to meet the five-year construction deadline).⁹ South Slope simply has no control over the equipment development and distribution practices of the handset manufacturers. The lack of available digital wireless handsets that meet the Commission's HAC requirements is, quite obviously, a circumstance clearly beyond the carrier's control. In view of the unique or unusual factual circumstances present here, application of the rule would clearly be inequitable, unduly burdensome and contrary to the public interest. In view of the fact that compliant digital wireless handsets are simply not available, South Slope clearly has no reasonable alternative but to request the instant waiver.

11. South Slope wishes to assure the Commission that it is committed to providing its hearing impaired subscribers with digital wireless handsets meeting a U3 rating under ANSI Standard C63.19 at the earliest practicable date, and that it will do so promptly once the handsets become generally available to Tier III carriers.

⁹ Additional case precedent supports this position. See Leap Wireless International, Inc., 16 FCC Rcd. 19573 (Comm. Wir. Div., WTB (2001) (granting extension of time so that licensee might deploy "high data rate" wireless technology that was not available in time to meet the five-year construction requirement); Monet Mobile Networks, Inc., 17 FCC Rcd. 6452 (Comm. Wir. Div., WTB 2002) (granting extension of time so that licensee might deploy "high data rate" wireless technology that was not available in time to meet the five-year construction requirement); and Warren C. Havens, Mimeo DA 04-2100, adopted July 12, 2004 (granting extension of the five-year construction requirement for 220 MHz licensees to allow for the use of next-generation digital technology in the band).

WHEREFORE, good cause shown, South Slope requests that the instant petition be granted.

Respectfully Submitted,
**SOUTH SLOPE COOPERATIVE TELEPHONE
COMPANY d/b/a SOUTH SLOPE WIRELESS**

By: /s/
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Dated: September 16, 2005

Attachment A

August 31, 2005 *Ex Parte* Notice filed by Motorola, Inc.
WT Docket No. 01-309



August 31, 2005

VIA ELECTRONIC SUBMISSION

Ms. Marlene H. Dortch, Secretary
Office of the Secretary
Federal Communications Commission
445 12th Street, SW
Washington, D.C. 20554

Re: Notice of Ex Parte Statement
WT Docket No. 01-309

Dear Ms. Dortch:

On Monday, August 29, 2005, Mary Brooner and John Welch, on behalf of Motorola, met with members of the staff of the Office of Engineering and Technology, including Bruce Franca, Bruce Romano, Julie Knapp, Dr. Rashmi Doshi, Martin Perrine, Patrick Forster and Alan Scrimme. The purpose of our meeting was to provide the FCC with an up-date on Motorola's activities to meet the requirements for hearing aid compatibility that take effect on September 16, 2005.

In the course of this meeting, Motorola stated that it is supportive of the Cingular petition to waive HAC requirements for the 850 MHz band and its recommendation to use only the 1900 MHz M ratings as an interim short term solution. Motorola also stated that it supports the waiver petition of T-Mobile for an additional 60 days to comply with GSM product. Motorola advised the FCC that GSM 1900 products identified to support T-Mobile's HAC product portfolio had unexpectedly not achieved an M3 or better rating when tested and reviewed for HAC certification by the TCB. Motorola learned this information on August 17 and informed T-Mobile on August 18, 2005. Motorola reported to the FCC that it is presently seeking HAC certification for other product to support T-Mobile and that some additional time will be needed by T-Mobile to receive the product and implement its carrier obligations.

Motorola also stated that it supports the recommendation of the ATIS Incubator to re-open the ANSI standard for the 850 MHz band and to re-examine the probe modulation measurement methods. Motorola also stated that further due diligence is needed for the 1900 MHz GSM portion of the HAC standard, ANSI C63.19, to insure that it predicts what it purports to predict.



Pursuant to Commission Rule 1.49(f), this ex parte letter is being filed electronically via the Commission's Electronic Comment Filing System for inclusion in the public record of WT Docket Number 01-309.

Sincerely,

Mary E. Brooner
Senior Director
Telecommunications Strategy & Regulation
Government Relations Office
Motorola, Inc.

cc: B. Franca
B. Romano
J. Knapp
R. Doshi
M. Perrine
P. Forster
A. Scrim

Attachment B

Declaration of J.R. Brumley
CEO, South Slope Cooperative Telephone Company
d/b/a South Slope Wireless

DECLARATION UNDER PENALTY OF PERJURY

I, J. R. Brumley, hereby state the following:

1. I am the C.E.O. of South Slope Cooperative Telephone Company d/b/a South Slope Wireless.

2. I have read the foregoing "Petition for Temporary Waiver or Temporary Stay." With the exception of those facts of which official notice can be taken, all facts set forth therein are true and correct to the best of my knowledge, information and belief.

I declare under penalty of perjury that the foregoing is true and correct. Executed on this 15 day of September, 2005.

 J.R. Brumley, CEO
J.R. Brumley